

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:02CR105

THIS MATTER is before the Court on motion of the Director of the Bureau of Prisons, by and through the United States Attorney, to reduce the Defendant's term of imprisonment to time served pursuant to 18 U.S.C. § 3582(c)(1)(A)(i).

Section 3582(c) reads in pertinent part:

The court may not modify a term of imprisonment once it has been imposed except that –

(1) in any case –

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment . . . after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that –

(i) extraordinary and compelling reasons warrant such a reduction[.]

18 U.S.C. § 3582(c)(1)(A)(i).

The Government advises the Defendant suffers from metastatic small-cell lung cancer. In 2006, chest x-rays revealed he had an enlarged right upper lobe lung nodule, and in April 2007, he was diagnosed with small-cell lung carcinoma. Initially, his cancer responded to radiation and chemotherapy, but in July 2008, a right lung malignancy was diagnosed with an increase in adenopathy and additional pulmonary nodules. Currently, the Defendant receives palliative chemotherapy. He can perform the Activities of Daily Living without assistance and uses a wheelchair when needed, however, his prognosis is extremely poor. In January 2009, his life expectancy was estimated at less than six months. The Government advises that upon his release from the Bureau of Prisons, the Defendant would reside with his sister and her daughter in Pisgah Forest, North Carolina, and that the terms of his supervised release would include the special condition that he not be permitted to operate a motor vehicle. The five-year term of his supervised release would begin upon his release from custody.

The Court, therefore, finds that the Defendant's terminal medical condition and limited life expectancy constitute extraordinary and

compelling reasons to warrant the requested reduction of sentence and the motion will be granted.

IT IS, THEREFORE, ORDERED that the motion of the Director of the Bureau of Prisons, by and through the United States Attorney, for reduction of sentence is **ALLOWED**, and the Defendant's sentence is hereby reduced to **TIME SERVED**.

IT IS FURTHER ORDERED that the Defendant be released from the custody of the Bureau of Prisons as soon as his medical condition permits, the release plan is implemented, and travel arrangements can be made.

IT IS FURTHER ORDERED that in addition to the standard conditions of supervised release, the Defendant shall not be permitted to operate a motor vehicle. All other terms and conditions of the original Judgment remain in full force and effect.

The Clerk of Court shall prepare an amended Judgment in accordance with the terms herein **FORTHWITH**.

Signed: March 31, 2009



Lacy H. Thornburg
United States District Judge

